SCOTT N. SCHOOLS (SC 9990) 1 United States Attorney 2 MARK L. KROTOSKI (CSBN 138549) Chief, Criminal Division 3 DENISE MARIE BARTON (MABN 634052) 4 Assistant United States Attorney 5 450 Golden Gate Avenue, Box 36055 6 San Francisco, CA 94102 Telephone: (415) 436-7359 7 Facsimile: (415) 436-7234 8 Attorneys for Plaintiff 9 UNITED STATES DISTRICT COURT 10 NORTHERN DISTRICT OF CALIFORNIA 11 SAN FRANCISCO DIVISION 12 UNITED STATES OF AMERICA, No. 3-06-70636 EDL 13 Plaintiff, [PROPOSED] ORDER AND STIPULATION 14 RECALLING AND REISSUING SUMMONS AND (2) EXCLUDING TIME 15 FROM APRIL 10, 2007 TO MAY 16, 2007 MARVIN EARL WEBB, SPEEDY FROM THE TRIAL CALCULATION (18 U.S.C. § 3161(h)(8)(A)) 16 Defendant. 17 18 19 On October 3, 2006, based on a criminal complaint presented by Bureau of Alcohol, Tobacco, Firearms, and Explosives Special Agent Tommy Ho, the Hon, Elizabeth D. Laporte 20 21 issued a summons for the Defendant to appear on November 7, 2006 at 9:30 a.m. The Defendant was served with the summons and complaint at his home in Tennessee on or about October 6, 2006. On November 7, 2006, after the parties filed a Joint Stipulation seeking to recall and 23 reissue the summons and exclude time, the Honorable Judge Edward Chen ordered that the 24 summons be recalled and reissued for February 2, 2007 and that the time from October 6, 2006 25 through February 2, 2007 shall be excluded from the Speedy Trial Act calculations. Thereafter, on February 1, 2007, upon filing of a Joint Stipulation seeking to recall and reissue the summons and exclude time, the Honorable Judge Maria Elena James ordered that the summons be recalled

 and reissued for April 10, 2007 and that the time from February 2, 2007 through April 10, 2007 shall be excluded from the Speedy Trial Act calculations.

Counsel for the Government and Defendant continue to discuss resolving this matter by plea agreement and a Rule 20 transfer to the Middle District of Tennessee to permit the Defendant, who suffers from health issues, to resolve the matter in that District. The Defendant's health problems significantly limit his ability to travel outside of the Tennessee area. Mr. Webb is recovering from back surgery performed three weeks ago and is scheduled for neck surgery on April 6, 2007 to repair four ruptured vertebrae. Due to these health complications, it will be extremely difficult for the Defendant to appear in San Francisco on April 10, 2007. The Defendant anticipates that he will be able to travel by May 16, 2007, the proposed date of for reissuance of the summons and initial appearance. The parties hereby seek additional time to continue discussing a plea agreement and the best means to resolve this matter and effect the Rule 20 transfer. Further, counsel for the Defendant does not believe it is in his client's best interests for the government to indict the case within 30 days of the service of the summons, as required under 18 U.S.C. § 3161(b).

In addition, counsel for the Government will be out of the Office for Department of Justice training at the National Advocacy Center in Columbia, South Carolina from April 2-6 and April 23 - Mary 3, 2007 and will be unavailable during this time to appear before this Court, present this matter to the Grand Jury of the Northern District of California, and facilitate a Rule 20 transfer should the discussions of counsel result in a plea agreement.

Accordingly, the parties have agreed as follows:

- 1. The summons for April 10, 2007 should be recalled, and a new summons should be reissued for May 16, 2007.
- 2. The defendant agrees to an exclusion of time under the Speedy Trial Act from April 10, 2007 to May 16, 2007. Failure to grant the requested continuance would unreasonably deny both government and defense counsel reasonable time necessary for effective preparation and deny the Government continuity of counsel, taking into account the exercise of due diligence, the need for both sides to investigate the facts of the case, and the on-going attempts to reach a resolution of

Cascer3e06:001-7016338686A02AGDocumentanto11 Fiileed1033/229/20007PagReageo83of 3

the matter. <u>See</u> 18 U.S.C. § 3161(8)(B)(iv).

3. Given these circumstances, parties agree and the Court should find that the ends of justice served by excluding the period from April 10, 2007 to May 16, 2007 outweigh the best interest of the public and the defendant in a speedy trial. <u>Id.</u> at § 3161(h)(8)(A).

IT IS SO STIPULATED.

DATED: March 27, 2007

DENISE MARIE BARTON
Assistant United States Attorney

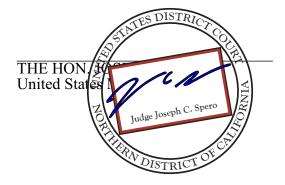
DATED: March 27, 2007

HUGH MUNDY Attorney for MARVIN EARL WEBB

IT IS SO ORDERED.

The summons for the Defendant's appearance on April 10, 2007 is hereby RECALLED. A new summons requiring the Defendant to appear on May 16, 2007, 2007 shall issue. Pursuant to the parties' stipulation and for the reasons set forth above, the time from April 10, 2007 to May 16, 2007 shall be excluded from the Speedy Trial Act calculations.

DATED: March 28, 2007



STIPULATION AND ORDER 3-06-70636 EDL